

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

**CASIE JO MCGEE and SARA ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
Individually and as next friends of A.S.M.,
minor child,**

Plaintiffs,

v.

Civil Action No. 3:13-24068

**KAREN S. COLE, in her official capacity as
CABELL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK,
Defendants.**

**DEFENDANTS' JOINT MOTION TO STAY BRIEFING
ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants jointly move this Court to immediately stay all briefing on Plaintiffs' Motion for Summary Judgment, which was filed on December 30, 2013, until the Court enters its scheduling order following the scheduling conference, which is slated to occur a mere six days from today on January 6, 2014.

Based on the constitutional challenge to state statutes raised in the Complaint, the State moved to intervene as a party to this action on November 22, 2013. The Court granted that motion less than one month ago, by Order dated December 2, 2013. The Court subsequently entered an Order and Notice, which set deadlines for the parties to file their Rule 12(b) motions and convene a Rule 26(f) meeting. The Order and Notice also directed counsel for the parties to appear for a scheduling conference on January 6, 2014.

On November 26, 2013, Defendant McCormick filed a motion to dismiss, and the State and Defendant Cole filed motions to dismiss on December 16, 2013. All three motions to dismiss are pending before this Court. Indeed, the motion filed by the State is not yet fully briefed and will not be until after the January 6 scheduling conference.¹

On December 16, 2013, the parties convened for a Rule 26(f) meeting, at which time Plaintiffs expressed their intent to move for summary judgment *before* the scheduling conference. Defendants expressed their concern that such an action was premature and made clear that if Plaintiffs moved for summary judgment before the scheduling conference, Defendants would seek relief from applicable deadlines in favor of a briefing schedule to be determined by the Court at the scheduling conference. Despite Defendants' concerns, the Plaintiffs moved for summary judgment on December 30, 2013. Without this Court's action, a response would be due January 13, 2014, fourteen days after December 30.

Defendants request that the Court stay further briefing on the pending summary judgment motion until the Court establishes a briefing schedule at the January 6, 2014 scheduling conference. *First*, a stay will not prejudice Plaintiffs, who have moved for summary judgment at the very early stages of the litigation. A suspension of the deadlines dictated by Local Rule 7.1(a)(7)² for a mere six days and until after the holidays will not unreasonably delay resolution of Plaintiffs' claims or affect their substantive rights. Plaintiffs have not alleged any emergent

¹ The rules permit the State until midnight on January 9, 2014 to file a reply in support of its motion to dismiss—ten days after Plaintiffs electronically filed their opposition. *See* Local Rule 7.1(a)(7) (requiring any reply to be filed and served “within 7 days from the date of service of the memorandum in response”); Fed. Rule Civ. P. 6(d) (adding three days “after the period would otherwise expire” when service is performed electronically); Fed. Rule Civ. P. 6(a)(4)(A) (permitting electronic filing until “midnight in the court’s time zone”).

² Rule 7.1(a)(7) permits the Court to modify the deadlines upon request.

harm, sought preliminary relief, or otherwise suggested a need for urgent action. To the contrary, Plaintiffs have stated that they “are amenable to reasonable requests for extensions to the time set by the Local Rules.” Joint Report of Parties Planning Meeting at 2, Dkt. 36. Moreover, Defendants are not seeking an extended stay and, in fact, have already agreed that this matter should proceed to summary judgment months earlier than would be required in other litigation.

Second, the State will be devoting resources over the next week, including the New Year holiday, to preparing a reply in support of its motion to dismiss. The opposition filed by Plaintiffs yesterday is fifteen pages long and includes new facts that contradict allegations made in the Complaint.

Third, it is premature to address Plaintiffs’ summary judgment motion. Three motions to dismiss are pending, and each deals with antecedent procedural issues that will likely narrow the issues necessary for resolution by the Court at summary judgment. Defendants request that the Court resolve these threshold jurisdictional questions before requiring the parties to brief the merits of Plaintiffs’ summary judgment motion.

Fourth, Defendants understand that Plaintiffs’ counsel have been involved in similar constitutional challenges across the country and are prepared to brief this case based on previously prepared filings.. In contrast, Defendants have not litigated similar challenges in West Virginia. For the State in particular, a brief on the merits in this sort of case—involving a constitutional challenge to a law duly enacted by the Legislature and signed by the Governor—requires significant time to prepare, as the positions taken by the State may have wide-ranging implications and must be thoroughly vetted.

For these reasons, Defendants respectfully move the Court to stay briefing on Plaintiffs' Motion for Summary Judgment until the Court enters its scheduling order following the scheduling conference on January 6, 2014.

Respectfully submitted,

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Defendants.

CERTIFICATE OF SERVICE

I, Elbert Lin, counsel for the Movant, hereby certify that on December 31, 2013, I electronically filed the foregoing *Defendants' Joint Motion to Stay Briefing on Plaintiffs' Motion for Summary Judgment* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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